

OPI Pulse: Court Rule Adoption PCB CVJS 11-01 and 11-02

Background: Most people don't know much about Florida's court rulemaking process, however it is important because it governs the procedures judges use in courtrooms. This can directly affect people seeking justice in court in areas like what evidence a court may hear, the handling of criminal prosecutions, and the speed and efficiency of trial proceedings. In Florida, the Legislature had authority over court rules until 1957 when the state constitution was amended to give courts rulemaking authority. In 1972, the constitutional amendment that created this court authority was changed to allow that a two-thirds vote by the Legislature could repeal a rule adopted by the court. One year later in 1973, the Florida Supreme Court ruled that they have exclusive rulemaking authority despite the existence of the repeal provision. The Florida House of Representatives then passed a bill in 1975 to change the repeal provision from a two-thirds vote to a majority vote; however it did not pass in the Senate.

Issue at a Glance:

The Civil Justice Subcommittee noticed two proposed committee bills regarding court rulemaking. Together, the bills propose to remove exclusive court rulemaking authority from the Florida Supreme Court, instead instituting a process whereby the Court would have the authority to recommend court rule changes to the Legislature for the Legislature's approval. Proponents favor this court rulemaking structure because it would closely align Florida's system with the existing federal court rulemaking structure. If the voters adopt the proposed constitutional amendment, the Legislature would have the authority to adopt, amend or reject rule changes proposed by the courts. Proponents of these reforms have expressed the following concerns as their reasons for these two proposed committee bills:

- Confusion between substantive and procedural law has led to legal disagreements among the Florida Supreme Court and the Legislature when both statute and court rules attempt to address the same issue.
- A lack of clarity defining the boundaries of the Court's rules has resulted in the creation of rights that are not required by the Constitution or Statute. For example, a court rule allows a criminal defendant who is not brought to trial within a certain time from arrest to be discharged and not prosecuted. This has become Florida law because it is in a court rule and the Legislature's ability to change the rule is limited.
- Confusion regarding court rulemaking has led to the State taking on expenditures that are not required by the Constitution and has caused private parties to incur substantial costs as a result of rules not approved or authorized by the Legislature. Proponents

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Terms to Understand:

Substantive Law:

Governs the rights and obligations of those who are subject to the law. This type of law defines the legal relationship between people or between people and the state.

Procedural Law:

Determines the rules for what happens in both criminal and civil proceedings. Procedural law provides the machinery for enforcing rights and duties.

Terms to Understand:

Rules of court:

- Appellate Procedure
- Civil Procedure
- Criminal Procedure
- Family Law Rules of Procedure
- Judicial Administration
- Juvenile Procedure
- Probate Rules
- Small Claims Rules
- Traffic Court

Committees who consider rule proposals:

- Appellate Court Rules
- Civil Procedure Rules
- Criminal Procedure Rules
- Family Law Rules
- Rules of Judicial Administration
- Juvenile Court Rules
- Probate Rules Committee
- Small Claims Rules
- Traffic Court Rules
- Code and Rules of Evidence

cite the example that the Court increased the amount of post conviction DNA testing by expanding the guidelines for which prisoners were eligible and which testing labs were allowed.

- The Florida Supreme Court has previously honored a low number of the Legislature's legally authorized repeals, rendering the Legislature's ability to check and balance the process in accordance with the law moot.
- The Legislature routinely adopts certain statutory changes, some of which may contain procedural aspects. Those laws that may impact court processes are not honored until the court adopts them as rules of court thus causing potential delays in the implementation of important legislation.

What the Bills Do:

PCB CVJS 11-01 and 11-02 propose changes to Florida's Rulemaking process to more closely align it with the federal court rulemaking process instituted in 1934. The federal process requires that the Supreme Court submit proposed court rules to Congress for approval prior to implementation. Details of the proposed committee bills include:

- Creating a Judicial Conference within the judicial branch responsible for reviewing the operation and effect of rules of practice and procedure in all state courts and for making recommendations to the Florida Supreme Court for proposed changes to court rules.
- Requiring the Judicial Conference be composed of the Chief Justice of the Florida Supreme Court, the Chief Judge of each of the five appellate districts and five circuit court judges.
- Establishing advisory committees and subcommittees within the Judicial Conference responsible for reviewing and proposing any changes to court rules.
- Providing a timeline and process by which proposed rules may be reviewed and considered in the advisory subcommittees, a rules committee, the Judicial Conference and the Florida Supreme Court.
- Establishing a process by which changes from the Supreme Court become effective upon affirmative adoption by the Legislature or within a specified timeframe should the Legislature take no action on the proposed rule change. Requiring any proposed changes to Florida's rules of evidence to require an affirmative approval by the Legislature to take effect.

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For Your Reference:

The Florida House of
Representatives:
www.myfloridahouse.gov

Florida House Republican
Office:
<http://www.myfloridahouse.gov/Sections/LeadershipOffices/MajorityLeadership/MajorityLeader.aspx>

Florida Supreme Court:
<http://www.floridasupremecourt.org/>

The Florida Bar:
<http://www.floridabar.org/>

Frequently Asked Questions:

Why do proponents of these bills feel these measures will better serve Floridians?

Proponents believe these bills will prevent the Florida Supreme Court from expanding rights for criminals, thereby requiring expenditures of state dollars that are not required by the Constitution. They also feel private parties will incur fewer costs to access the court system.

What if there is a conflict between a court rule and a general law?

The bills provide that the general law prevails. Proponents state the aim of these bills is to end conflicts between the courts and the Legislature over procedure versus substance and to end litigation over whether a particular law is procedural or substantive.

If the bills are passed, what is included in the constitutional amendment that would be decided on by voters?

The amendment would remove the authority of the Florida Supreme Court to unilaterally adopt rules of court and replace it with a procedure where the court rules of practice and procedure are recommended by the Supreme Court and adopted, amended or rejected by the Legislature.

Who would lead the Judicial Conference, who would it include and where would it be housed?

The bills provide that the Chief Justice of the Florida Supreme Court would chair the conference and other members of the conference would include five chief judges of the district courts of appeal and one circuit judge from each appellate district. The Judicial Conference would be administratively housed in the state courts system.

What authority does the Florida Supreme Court have over the Judicial Conference?

The Florida Supreme Court may adopt, modify or reject any recommendation of the conference. Recommendations of the Supreme Court are presented to the Legislature. The specific proposed rule takes effect July 1 of the following year unless otherwise provided by law.

What will prevent the Legislature from overstepping its bounds when it comes to their rulemaking authority?

The legislative process is designed to be open and transparent, allowing for public input and debate. The Florida Constitution requires that all legislative meetings be noticed to the public. Proponents of the bills believe the open processes of the Legislature will protect against any potential abuse of rule making authority.

What makes people think this rule adoption system will work more effectively?

Proponents state this model has been utilized effectively by the federal courts and Congress for more than 77 years.

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